(143)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION No.842 OF 2005

PETITIONER A.T. Associates, A Partnership Firm, Registered under the Indian Partnership Act, 1932, through its Partner Shri Amit Tiwari, S/o. Shri Rajendra Tiwari, Aged about 23 years, R/o. Naharpara, Raipur (C.G.)

Vs.

RESPONDENTS

1. Food Corporation of India,
Through its Managing Director,
Food Corporation of India,
Head Quarters Khadhya Sadan, 16-20,
Bara Khambha Lane,
New Delhi – 110 001.

2. The Managing Director,
Food Corporation of India,
Head Quarters Khadhya Sadan, 16-20,
Bara Khambha Lane,
New Delhi – 110 001.

3. The Senior Regional Manager,
Food Corporation of India,
Regional Office, Ring Road Junction,
Telibandha, Raipur (C.G.)

4. The District Manager,
Food Corporation of India,
District Office, Madina Building, Jail Road, Raipur (C.G.)

Present : Shri Rajeev Shrivastava, learned counsel for the petitioner.
Shri Ali Asgar, learned counsel for the respondents.

ORAL ORDER

(Passed on 18th September, 2006)

The subject matter of judicial review brought before this Court by way of this writ petition arises out of rights and obligations arising out of an ordinary contract, that too, in a concluded contract.

(2) The grievance of the petitioner, in brief, is that an application made by it in response to the tender notification dated 03.07.2000 issued by the respondent-Corporation calling for application for appointment of long route transportation contractors (LRTC), it was appointed as LRTC. It is alleged that when the petitioner actually started operating the contract, it found that distance of the points between which the petitioner was to transport food grains between Basna to Mandir Hasaud and Baloda Bazar to Bhatapara was more than the actual distance. That led to the petitioner making request to the Corporation to constitute a committee, and the committee so constituted by the Corporation measured the distances and in terms of those distances measured by the committee, the Corporation is under a legal obligation to pay more than what it has agreed under the contract. In that regard, it is alleged that the representation made by the petitioner was turned down. That led to the filing of this writ petition praying for intervention of the Court and seeking a direction to the respondents to make payment to the petitioners in accordance with the distances shown by the DMC from Basna to Mandir Hasaud and Baloda Bazar to Bhatapara for the entire contract period commencing from the year 2002 concluded in the year 2004.

(3) Opposing the writ petition, the respondents have filed their reply. In Paragraph 6 of the reply it is stated thus:-

> "**6. Reply to para 5.6--** The contents of para 5.6 is not correctly stated, hence it is denied. It is specifically denied that the respondent has made payment for the less distance than the actual distance as alleged. In fact to solve the dispute of distance the matter was taken up in a meeting with the petitioner on 21.06.2003 and it has been stated that a

committee will be constituted to take measure of distance between new godown Saraipali to Mandirhasaud depot and the payment will be regularized accordingly. Accordingly the measurement has been worked out by the committee in its minutes of meeting dated; - 21.06.2003, which is evident from **ANNEXURE R-1** and the measurement is determined by the committee taking into consideration the distance certificate issued by survey of India, Govt. of India authority. The survey of India's Certificate has provided distance from point to point between two places viz Sairaipali and Mandirhasaud, Basna to Mandirhasaud and the committee had worked out the distance of FCI, Godown from point to point at each destination. Taking into consideration of all the above facts, payment was made accordingly to the petitioner, which was accepted without any protest.

Basna Depot to Mandirhasaud Depot – 115.1 Rows. Saraipali Depot to Mandirhsaud Depot – 144.6 Rows. The distance certificate issued by survey of India is evident from **ANNEXURE R-2** & final distance reported to respondent No.3 i.e. Sr. Regional Manager vide letter dated 08.10.2003 which is evident from **ANNEXURE – R-3**.

In other words the respondent No.4 i.e. District Manager, who has made payment to the petitioner based on actual distance was st4ictly conforming to the distance reported to the competent authority i.e. Sr. Regional Manager on whose behalf and under whose authority the agreement was entered into with the petitioner and exercised through District Manager Food Corporation of India respondent No.4. It will thus be seen that the payment of transportation to the petitioner has been made correctly on the basis of

actual distance and not to any deviation lesser or higher as alleged in this para. As also the payment for transportation of goods from Baloda Bazar and Kasdol to Bhatapara is being regulated as per the distance provided by the S.D.O., P.W.D. Baloda Bazar which is evident from **ANNEXURE R-4.**

Furthermore in paragraph 10 of the reply, it is contend thus:-

"**10. Reply to para 5.11 to 5.13** – That the contents of this para are not correct, hence denied.

Under the Sl.No.5 above the terms and conditions stipulated in tender clause page No.12 has been stated, accordingly to which the Chief Engineer PWD or an officer nominated by him has to certify the distance and if the desired distance not provided by the PWD only then the committee formed by the Sr. Regional Manager or any officer acting on his behalf may measure the distance between the two places and can be made applicable. But in this case the distance between Saraipali and Basna to Mandirhasaud has been worked out on the basis of the Certificate of Survey of India which is a Central Govt. organization and as also as per the Certificate dated 09.04.2003 issued by PWD Baloda Bazar from Baloda Bazar to Bhatapara, FCI, has made the payment to the petitioner on the basis of the actual distance between the places correctly."

Having regard to the pleadings of the parties, what emerges is a factual contentious issue to be tried and decided in order to grant relief to the petitioner. Secondly, as noted above, the dispute arises out of an ordinary concluded contract. In such facts-situation, as held by the Hon'ble Supreme Court and High Courts in umpteen number of cases, the parties

have to workout their legal remedies by way of private law review. Simply because, the Food Corporation of India is a 'State' for the purpose of Act 12 of the Constitution, there is no obligation for this Court to undertake adjudication on contentious factual issues and grant relief to the parties. There is no such need also, because, the petitioner has effective, comprehensive and complete legal remedy before the jurisdictional civil Court. Furthermore, such contentious factual issues cannot be resolved or decided in a summary proceedings under the Article of 226 of the Constitution on the basis of affidavits and counter affidavits only without permitting the parties to adduce substantial evidence and to cross-examine each other. The writ petition is, therefore, dismissed, however, reserving liberty to the petitioner to workout legal remedies before the jurisdictional civil Court, if he is so advised. No costs.

Sd/-
Chief Justice